

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

GENE IRVING GARLAND

§

VS.

§

CIVIL ACTION NO. 5:08-CV-155

WARDEN KEITH ROY

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Gene Irving Garland, a prisoner confined at the Federal Correctional Institution in Texarkana, Texas, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). On January 21, 2009, the United States Supreme Court remanded a case to the Ninth Circuit for further consideration in light of *United States v. Santos*, __ U.S. __, 128 S. Ct. 2020 (2008). *Moreland v. United States*, __ U.S. __, 120 S. Ct. 997 (2009). Petitioner argues that the Supreme Court's action indicates that the holding in *Santos* is not

limited to cases involving illegal gambling.¹ Whether the Supreme Court eventually broadens the application of *Santos* has no bearing on this case. Petitioner may not pursue habeas relief under Section 2241 because his claims do not meet the requirements set forth in *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this 2nd day of July, 2009.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

¹ Petitioner erroneously claims that the Supreme Court granted certiorari in *United States v. Tyrrell*, which also raised a *Santos* issue. *United States v. Tyrrell*, 269 Fed.Appx. 922 (11th Cir. Mar. 17, 2008). The Supreme Court denied certiorari on June 15, 2009. *Tyrrell v. United States*, __ U.S. __, __ S. Ct. __, 2009 WL 1650206 (June 15, 2009).